

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

UNITED STATES OF AMERICA)
)
vs.) No. 3:94-0014
)
ELLIS and KATHY SAAD)

BEFORE THE HONORABLE ROBERT ECHOLS, JUDGE

T R A N S C R I P T
O F
P R O C E E D I N G S
April 7, 1994

APPEARANCES:

For the Government: Mr. Robert C. Watson
 Mr. T. Anthony Quinn
 Ms. Wilda Cobb
 Attorneys at Law

For the Defendant: Pro se

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1 The above-styled cause came on to be heard on
2 April 7, 1994, before the Honorable Robert Echols, Judge of
3 the United States District Court for the Middle District of
4 Tennessee, when the following proceedings were had, to-wit:

5 THE COURT: Are the lawyers here in the case of
6 United States of America versus Ellis Saad and Kathy Saad,
7 Civil Action 3:94-0014, and are we ready to proceed?

8 MR. WATSON: Your Honor, the government is here
9 and ready to proceed. If I could, I would like to
10 introduce Mr. Tony Quinn, a lawyer in the Department of
11 Justice from the Environment & Natural Resources Division,
12 and he will be the primary lawyer for the United States.
13 Also Ms. Wilda Cobb, an attorney for the Environmental
14 Protection Agency, and she is here assisting in this case.

15 THE COURT: Okay, Mr. Quinn, Ms. Cobb.

16 MR. WATSON: With the Court's permission, I am
17 not going to remain for the rest of the proceedings because
18 they are going to handle the proceedings.

19 THE COURT: All right, Mr. Watson. Are you Mr.
20 Saad?

21 MR. SAAD: Yes, Your Honor, I am Ellis J. Saad.

22 THE COURT: Okay, what about your wife? Are
23 you here on her behalf?

24 MR. SAAD: Yes, sir.

25 THE COURT: Are you joint owners of the

1 property in question?

2 MR. SAAD: Yes, sir.

3 THE COURT: Are you here to represent yourself
4 in this matter, Mr. Saad?

5 MR. SAAD: I will have to, Your Honor. I was
6 unable to acquire legal action because of funds, lack of
7 funds.

8 THE COURT: Okay. Have you received a copy of
9 the government's motion in this matter? This is a motion
10 for an order in aid of the immediate access. What that
11 means is that the government is seeking access to your
12 property in order to conduct certain tests to determine
13 whether or not contaminants are on the property and if so
14 how they should be disposed of or treated. And that may be
15 a brief overview, but a more specific explanation of their
16 request and their complaint against you is contained in the
17 motion and the supporting memorandum. Have you received
18 copies of those documents?

19 MR. SAAD: Yes, sir.

20 THE COURT: All right, have you read them and
21 do you understand them?

22 MR. SAAD: Yes, sir.

23 THE COURT: Are you prepared to proceed today?

24 MR. SAAD: Yes, sir.

25 THE COURT: Okay. This is a motion filed in

1 this complaint as the Court has stated to seek an order
2 from this court to aid in obtaining immediate access to the
3 Saad property which is located here in Davidson County, I
4 believe. All right, Mr. Quinn, are you going to proceed
5 with the motion then?

6 MR. QUINN: Yes, Your Honor, if I may.

7 THE COURT: All right.

8 MR. QUINN: Good afternoon. As the Court
9 noted, this is on our United States motion in aid of
10 access. What the request of the United States is is that
11 the Court issue an order granting the United States EPA and
12 its representatives and its other agents access to the Saad
13 Trousdale Road super fund site and also granting injunctive
14 relief against the property owners to prohibit them from
15 obstructing, impeding or interfering with the efforts of
16 the EPA and its agents to assist in cleaning up the site.

17 The United States, there are two bases on which
18 the Court may grant the relief requested. The first two
19 are procedural. The first the United States notes that the
20 defendants have not filed an answer to the complaint and
21 are technically in default. If the Court -- United States
22 would appreciate it if the Court would set a time within
23 which Mr. Saad must file a response or otherwise defend the
24 case.

25 The second ground is pursuant to local rule

1 8(b)(3). Mr. Saad has not filed an opposition to the
2 motion.

3 Sir, on the final ground and the reason
4 everybody is really here is on the merits. As set forth in
5 the papers filed by the United States, the United States
6 has demonstrated that the EPA has met the burden required
7 to gain access to the site. The EPA has a reasonable basis
8 to believe there are to be a threat, release or a threat of
9 release of hazardous substances in the environment from the
10 site or from a property adjacent to the site. The demand
11 for entry and inspection is well supported by both the law
12 and the facts, tests, observations and is not arbitrary or
13 capricious nor is it an abuse of EPA's discretion.

14 EPA also needs access to the site both to
15 determine the need for further response or for whatever the
16 appropriate response might be and the need to effectuate
17 that response which is probably going to be in the form of
18 removal, and that is a response within the meaning of
19 CERCLA Section 1101.

20 Finally the United States and EPA, the agency
21 and the Department of Justice had made several attempts to
22 gain Mr. Saad's agreement to allow us to gain access to the
23 property but have been unable to do so.

24 We have brought with us three witnesses if the
25 Court would like to hear from them.

1 THE COURT: All right.

2 MR. QUINN: First one is Mr. Fred Stroud. He
3 is the on-scene coordinator for EPA. Second is Mr. Greg
4 Powell. He is with the environmental response team and
5 will testify about the ground water hydrology and the
6 effects of the property. And the third witness is Ms. Beth
7 Davis who is an attorney with the EPA and will testify
8 about the attempts the United States has made.

9 FRED BENJAMIN STROUD, III, was called, and
10 being duly sworn, was examined and testified as follows:

11 MR. QUINN: May I inquire, sir?

12 THE COURT: Yes.

13 DIRECT EXAMINATION

14 BY MR. QUINN:

15 Q. For whom do you work, Mr. Stroud?

16 A. The United States Environmental Protection
17 Agency.

18 Q. And how long have you worked for EPA?

19 A. Since 1975.

20 Q. What is your job title, sir?

21 A. I am a senior on-scene coordinator for the
22 agency.

23 Q. What does an on-scene coordinator do?

24 A. Well, basically we respond to emergency
25 incidences such as train derailments, truck wrecks. We

1 clean up what are called super fund sites. We direct the
2 clean-up of these sites where there's been a release or
3 discharge of hazardous substances or oil.

4 Q. Are you the on-scene coordinator assigned
5 responsibilities for the Saad Trousedale Road super fund
6 site?

7 A. Yes, I am.

8 Q. What does one have to do to become an on-scene
9 coordinator, sir?

10 A. Well, the basic requirement is you have to have
11 a science degree. Obviously there has to be an opening at
12 the agency and then you are hired on and you take
13 additional courses while you are there to become more
14 efficient in your job, other hazardous material-related
15 course.

16 Q. When did you become an on-scene coordinator
17 with EPA?

18 A. When I came on September of 1975.

19 Q. What is your undergraduate degree in, sir?

20 A. I have a B.S. in biology with a minor in
21 chemistry.

22 Q. From what institution?

23 A. Athens College in Alabama.

24 Q. In addition to undergrad studies, what other
25 education have you received related to your duties as an

1 on-scene coordinator?

2 A. I am a few credits short of another degree in
3 urban planning, water resources related.

4 Q. From what institution is that?

5 A. That was Georgia State in Atlanta.

6 Q. Other than your education, what experiences or
7 skills have you gained that enable you to perform your
8 duties as an on-scene coordinator?

9 A. Well, I have warrant officer training. That
10 means that I have the authority to spend up to 50,000
11 dollars in any emergency situation without receiving
12 permission from a higher authority.

13 I have project officer training which means I
14 can oversee the clean-up and the spending of funds on super
15 fund sites or oil spills. We are required to take a
16 40-hour health and safety training course, and then there
17 is a lot of other courses, refresher courses we take as we
18 gain more experience. But those are the main courses that
19 are required.

20 Q. Your years as an on-scene coordinator, how many
21 projects have you managed and corrected involving clean-ups
22 of hazardous substances?

23 A. Well, I have responded to over two or three
24 hundred spills and I have been responsible for directing
25 clean-up at 50, 75 sites totaling these total somewhere

1 they can range anywhere from 50,000 dollars to seven or
2 eight million dollars.

3 Q. Those sites, the 50 or so sites that you have
4 mentioned, have you ever had occasion to make a deter-
5 mination as to whether there was a release or a threat of
6 release of hazardous substances?

7 A. That's my total responsibility as the on-scene
8 coordinator's responsibility to determine that.

9 Q. In general what is the work done at the super
10 fund sites that you have managed?

11 A. Well, we have had a lot of varied ones. I was
12 responsible for the first transportable incinerator used as
13 a super fund site. We have used something called soil
14 vapor extraction for taking the vapors out of ground. We
15 have used water treatment for removal polychlorinated
16 biphenals from water that have been contaminated. Just a
17 large number of options and solutions to any of these
18 sites. They can be very simple or they can be very
19 complicated.

20 Q. Do those options and solutions lie within your
21 responsibility as an on-scene coordinator?

22 A. Yes, they do.

23 Q. Sir, have you ever been recognized by the
24 United States or the Environmental Protection Agency for
25 your actions as an on-scene coordinator?

1 A. Yes, I got a gold medal for serving in Kuwait.
2 I headed up the interagency air team for coordinating and
3 dealing with the Saudis and the Kuwaitis with the fall-out
4 from the fires. I also was sent with another group of
5 interagency people to oil blow-out in Russia. Received an
6 award of acknowledgment for working on the Exxon Valdez
7 spill, just to name a few.

8 Q. Thank you. Have you ever testified in court on
9 behalf of the United States Environmental Protection
10 Agency?

11 A. Yes, I have.

12 Q. And about how many times have you done that?

13 A. I think it's three or four times in federal
14 court.

15 Q. Have you ever been given depositions on behalf
16 of the EPA?

17 A. Yes.

18 Q. And about how many times is that?

19 A. That's maybe ten times. We are required to
20 give these depositions after the site has been cleaned up
21 normally for the cost recovering process.

22 Q. Have you ever sworn out affidavits and
23 declarations in support of any relief requested by the EPA?

24 A. I have been a part to that. I have not done it
25 solely myself.

1 MR. QUINN: Sir, at this time, Your Honor, at
2 this time we would proffer Mr. Stroud as an expert witness
3 in the field of emergency responses to releases and
4 threatened releases of hazardous substances into the
5 environment.

6 THE COURT: All right.

7 Q. Mr. Stroud, what is your current work load with
8 regard to projects you manage?

9 A. Currently I am on detail to headquarters EPA.
10 I am working on the national contingency plan. That's the
11 rule by which the agency responds to spills and CERCLA
12 removals. I am on that work group trying to finish up the
13 rulemakings due out in August, but normally I am still an
14 on-scene coordinator working out of Atlanta's EPA region
15 four office. I have three sites going on right now while I
16 am in Washington. I am either working them by phone or
17 have a substitute on-scene coordinator assisting me in
18 them.

19 Q. Thank you. When did you begin your detail up
20 in Washington?

21 A. March 14 of '94.

22 Q. Sir, can you please tell us about the site's
23 layout and history and the history of contamination as you
24 know it. And earlier today we discussed the use of
25 facility drawing. Would that help you in your description?

1 A. Yes. That would be --

2 MR. QUINN: May I approach the witness, Your
3 Honor?

4 THE COURT: Yes, just hand it to the marshal.
5 She'll help you.

6 MR. QUINN: I have a copy for the Court as well
7 if I may.

8 Let the record reflect I am giving a copy to
9 Mr. Saad.

10 Q. The marshal has just handed you what has been
11 marked as Government Exhibit Number 1 for identification.
12 Could you please take a look at that, sir, and tell me what
13 it is?

14 A. This is a schematic diagram of the Saad
15 property and two of the adjacent properties next to it.

16 Q. What are the adjacent properties, sir?

17 A. One of them belongs to a body shop and the
18 other one is Franklin Brick, also one of the potential
19 responsible parties for the site.

20 Q. And the bottom of the exhibit of the exhibit
21 sticker in the top left I note that cross hatch line. Can
22 you tell me what that is, please?

23 A. My exhibit thing is in the righthand corner.

24 Q. Along the bottom of the exhibit.

25 A. Okay. You are referring to the north-south

1 arrow.

2 Q. That's correct. Actually I am referring to
3 what appears to be the CSX railroad track.

4 A. Yes. The CSX railroad track bound the property
5 on the west side. It is about a 20-foot high embankment
6 there. The tracks sit up on top of the embankment.

7 Q. When was the first time you went to the
8 property?

9 A. I believe it was some time in 1979. The State
10 of Tennessee water quality people requested our assistance.
11 The owner or operator of the facility at that time I think
12 it was John P. Saad was reportedly dumping sludges from his
13 waste oil business into what appeared to be a sink hole in
14 the would be the southwest corner of the property. That
15 would be that area right there. And they asked us to come
16 up to see if we could do something, we, the EPA. And at
17 that time when I got on the site, there was a large
18 accumulation of sludgy material that was in this property.
19 Was being covered up with hay. The State person had been
20 out there taking pictures at night in a surveillance mode.
21 He was using that body shop next door to take pictures.

22 We were unable to do anything at that time
23 because super fund had not been passed and would not be
24 passed until the end of 1980. So we did initiate some
25 criminal investigations against the owner-operator.

1 Q. What were the result of those criminal
2 operations if you recall?

3 A. Well, there was two other sites. The only
4 thing I remember is that he may have been charged with mail
5 fraud. I am not sure they were able to do anything about
6 the environmental crimes.

7 MR. QUINN: Let the record reflect I am showing
8 Mr. Saad a photograph. I apologize to the Court. I only
9 have one copy. With the Court's permission I'd like the
10 witness to take a look at it.

11 THE COURT: All right.

12 Q. The marshal has just handed you what's been
13 marked for identification as Government's Exhibit Number 2.
14 Can you tell us what that is?

15 A. That is the sludge pit that I observed when I
16 arrived there sometime in 1979 except there was a little
17 more straw spread over the top of it to either soak up the
18 water or cover it up a little.

19 Q. You have talked about a sludge pit. What is a
20 sludge pit, sir?

21 A. Well, it is just oily material that's dumped in
22 a depression in the ground. In this area in the Nashville
23 area, central Tennessee, central Kentucky, a lot of sink
24 holes appear because of the topography of this area and
25 sometimes that sink hole will collapse causing a depression

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1 that. Please tell us what the analytical results are, sir.

2 A. This these analytical results reflect that area
3 that we looked at in the photo. It doesn't look like this
4 now. It's been what, 13 or 14 years. That area has been
5 covered over with gravel and other fill material to obscure
6 that oily waste. The potentially responsible parties hired
7 a contractor and they did a sampling all over the site and
8 they also place they sampled was in this southwest corner
9 where this material now sits on CSX property, Franklin
10 Brick property and the old Saad property. So they
11 excavated down to about 12 feet and these samples indicate
12 some of the analytical results of the material taken out of
13 the excavation.

14 Q. Okay. Sir, on the first page there is a list
15 of items. The first one is arsenic. Sir, is arsenic a
16 hazardous substance?

17 A. Yes, it is.

18 Q. Is barium a hazardous substance?

19 A. I think so.

20 Q. Is cadmium a hazardous substance?

21 A. Yes, it is.

22 Q. Sir, out of the items listed on the analytical
23 results which are within Government Exhibit Number 3, can
24 you tell me approximately how many hazardous substances are
25 listed there?

1 A. Well, the ones of concern would be lead and
2 cyanide, the more toxic ones, the ones we would be
3 concerned with on that page. Not sure if all of these fall
4 under hazardous substances or not, but the ones of concern
5 at this site that we would consider the most toxic are the
6 ones you have identified before, the lead and the cyanide
7 and the mercury.

8 Q. Let's go to the second page of the exhibit
9 please under the title xylene. I note that the result says
10 11,000 ppm. What does that mean, sir?

11 A. That's one thousand parts per million. It is
12 an analytical amount that indicates the concentration of
13 the chemical.

14 Q. And xylene, is xylene a hazardous substance?

15 A. Yes, it is.

16 Q. Sir, what is the basis for EPA's determination
17 that there is or has been a release of hazardous substances
18 or pollutants or contaminants at the Saad Trousdale Road
19 site?

20 A. Well, we take all this data, take a look at it
21 and see what hazardous substances that we have that are on
22 our list, and there is at least ten of them that we
23 identify. Then we determine whether these chemicals can be
24 in contact with some part of the environment. In this case
25 they are in contact with the ground water. The whole area

1 is saturated with a slick thick sludgy area containing
2 these hazardous substances. There is also oil intermingled
3 with these hazardous substances, and we found this down to
4 a depth of 12 feet. And we had to stop then because of the
5 railroad embankment. There was a fear that it might cave
6 in so we have some 33,000 cubic yards of this sludgy
7 material in the southwest corner of the property, and the
8 threat is that this material can leach into ground water
9 and in this type of geology and the Tennessee area can
10 enter surface streams. There are a number nearby.

11 Q. In your opinion, sir, has there been a release
12 of hazardous substances in this site within the meaning of
13 CERCLA?

14 A. There is a release into the ground, yes.

15 Q. On I note on the first page of Government
16 Exhibit Number 3 for identification the date received is --
17 withdrawn. The date of collection is October 12, 1992; is
18 that correct?

19 A. I have October 13. Okay. October 12.

20 Q. Do you have any reason to believe that the
21 conditions at the Trousdale Road super fund site have
22 changed at all with regard to the presence of hazardous
23 substances since that date?

24 A. Very minimally. Some of this material we I
25 requested that the PRP's take off the site. But most of

1 the material was put back into the excavation hole and then
2 back filled, covered over until the PRP's could return to
3 complete the clean-up.

4 Q. Mr. Stroud, what was when was the last time you
5 observed the Saad Trousdale Road site?

6 A. I went and took a look at it today with Greg
7 Powell.

8 Q. You did not enter onto the property, did you,
9 sir?

10 A. No, we just drove up to the fence. This is a
11 fence and a gate.

12 Q. Your opinion, sir, what is the threat that is
13 posed by the site now?

14 A. There is a potential substantial threat that
15 these hazardous substance could enter into the ground
16 waters of the State of Tennessee and contaminate them.

17 Q. What is the extent of the contamination at the
18 site now, sir?

19 A. We don't know that yet because the access ran
20 out and the PRP's were unable to complete the total
21 assessment of the property.

22 Q. What needs to be done to determine what needs
23 to be done today to determine what else needs to be done?

24 A. Well, I propose that we are going to go back in
25 and open, going to have to open the excavation area back

1 up. Do what we call dye tracing from the site to see where
2 these materials are leaching out to this dye tracing helps
3 you determine where the material is actually being released
4 and coming out in the environment. We still have to
5 determine the total extent of contamination. We don't know
6 how far this material goes onto the Franklin Brick
7 property. We don't know how far back it goes into the CSX
8 Railroad embankment, and then lastly we'll have to work
9 with the railroad to come up with some type of engineering
10 plan to determine the best way to deal with the embankment
11 so that we don't cause it to collapse since they do have
12 train cars that run on top of it. So those are the
13 priority items from the site, and then from that
14 information we would be able to determine how we want to
15 clean up the site. What our treatment options are then.

16 Q. Who is going to help you as the OSC determine
17 the nature and extent of the ground water contamination
18 through dye testing?

19 A. Greg Powell with environmental response team.
20 That's an arm of EPA. They assist the on-scene
21 coordinators in the technical data gathering.

22 Q. If access is granted, how long after access is
23 granted does EPA anticipate being able to mobilize
24 activities for a response at the property?

25 A. We'll be once we're granted access we'll be

1 mobilizing our contract people to get the proper resources
2 in place and probably be two to three weeks before we can
3 actually be on site. We'll have to bid out some of this
4 work before we can go on site. Some of it we can do with
5 contractors we already have on board.

6 Q. Were you able at one time to more quickly
7 respond with people at the site?

8 A. Yes, we were ready to go I guess when we were
9 going to have this same hearing in the first part of March.
10 I had already set up things with Greg to get the
11 contractors out there, but the hearing was cancelled and
12 then the people that we had on board they had to go to do
13 some other projects and so now we've got to get them back
14 in our schedule, and that's what we plan on doing.

15 Q. What has been the effect of the defendant's
16 refusal to grant access to the property been on the clean-
17 up effort at the site?

18 A. There's been no clean-up. From my experience
19 the longer you leave these sites, the worse they get, the
20 more the pollution sits and the more it takes to clean it
21 up. Taking timely action is always the best in super fund
22 sites.

23 Q. As the on-scene coordinator as an expert in
24 this area do you have a reasonable basis to believe that
25 there is a release or a threat of release of hazardous

1 substances or pollutants or contaminants at the site?

2 A. Yes, I do.

3 MR. QUINN: Your Honor, I have no more
4 questions of Mr. Stroud.

5 THE COURT: All right. Mr. Saad, you have a
6 right to examine this witness. That is, you may question
7 him in any manner that you wish.

8 MR. SAAD: Okay, thank you, Your Honor.

9 CROSS EXAMINATION

10 BY MR. SAAD:

11 Q. What is that photograph? If you don't mind
12 holding up, Fred, I appreciate it. That is a pond that you
13 are saying it is on this property; right?

14 A. Yes, it was.

15 Q. On the Saad, my property or Saad property?

16 A. It was in the corner of the report that
17 appeared to be your brother's property at the time of my
18 visit.

19 Q. Southwest corner.

20 MR. SAAD: I might at this time if I may, Your
21 Honor, the property originally belonged to my brother. I
22 acquired it and bought it in 1988.

23 THE COURT: You will get a chance to testify in
24 just a minute. Just ask this witness about anything that
25 he's testified about or anything you wish to ask him.

1 Q. Did you actually see this pond?

2 A. Yes, sir, I have. Barry Sulcan with Tennessee
3 Water Quality was there. Showed me the pond and I looked
4 at it. I wouldn't call it a pond. I call it a sludge pit.

5 Q. Where was it in relation to the buildings and
6 the property and all on the fences and the fence line,
7 where was that pond? If you come in at the front of the
8 entrance, it could have been in the left corner.

9 Q. Left corner of the property?

10 A. If you have the exhibit.

11 Q. Okay.

12 A. It would be down in the bottom near the
13 Franklin Brick property.

14 Q. All right.

15 THE COURT: Did you say this pond or sludge pit
16 as you call it is still out there today, or did you say
17 that's been covered over?

18 THE WITNESS: It does not the way it does not
19 appear like this in the picture now. It is under rock and
20 other soil that was placed on top of it between 1979 and
21 1988 whenever the PRP's went out there to start their
22 investigation.

23 THE COURT: Okay. Go ahead, Mr. Saad.

24 MR. SAAD: Your Honor, I have a couple of
25 pictures here that I'd like to submit. I don't have extra

1 copies.

2 THE COURT: Do you want to submit them through
3 this witness?

4 MR. SAAD: Yes, sir, they are for this witness
5 to identify what he was just stating.

6 THE COURT: All right.

7 MR. QUINN: Your Honor, the United States has
8 no objection to the introduction of either photograph.

9 THE COURT: Okay.

10 MR. SAAD: Do I need to label those?

11 THE COURT: Just ask him if he can identify
12 those photos. Can you identify those photos, Mr. Stroud?

13 THE WITNESS: Yes, this one appears to be
14 standing out on Trousdale Road looking west with the yellow
15 building being the building on Mr. Saad's property.

16 THE COURT: All right, let's mark those for
17 identification. That will be exhibit if you will hand that
18 over that will be Exhibit 4.

19 A. The other one --

20 THE COURT: Mr. Quinn, before we move forward,
21 you handed the witness and we identified three exhibits.
22 Did you wish those to be received into evidence?

23 MR. QUINN: Yes, Your Honor, we might as well
24 move them into evidence.

25 THE COURT: All right, the first three exhibits

1 then will be received into evidence. The first exhibit is
2 a diagram of the property, the second exhibit will be the
3 photograph of the sludge pit as identified by the witness,
4 and the third will be the analytical work that was done on
5 the property and as collected in 1992, October of '92.

6 All right, go ahead, Mr. Saad. Your picture
7 then will be marked as the next Exhibit 4.

8 Q. Okay. Do you have a picture?

9 A. Okay, we have got Exhibit 4. I have what would
10 be the second picture of yours.

11 MR. SAAD: Can he have that one back, Your
12 Honor?

13 THE COURT: Yes, hand that other one over and I
14 will mark it as Exhibit 5.

15 THE WITNESS: Do you want me to describe this
16 other picture first?

17 THE COURT: Yes, if you can identify that,
18 please do so.

19 A. In appears to be in the back of the property
20 looking south towards the Franklin Brick building. It
21 shows -- I don't know what year this was taken in. It was
22 apparently taken before the PRP's began work. There seems
23 to be a lot of vegetation growing on top of the ground.

24 Q. Now, the first picture you identified is the
25 front of the building?

1 A. Appears to be, right.

2 Q. And the gate there and you stated just a few
3 seconds ago that the pond was to the back left of the gate
4 as you went in; right?

5 A. Yes, sir.

6 Q. Okay. Now, the other picture is you have
7 indicated is the back of the property to the towards the
8 Franklin Brick?

9 A. Correct.

10 Q. In other words, you are looking into the
11 southwest corner?

12 A. Yes, I think so.

13 Q. Okay. All right, and you are saying the pond
14 was in that back southwest corner?

15 A. Yes, that's the way I remember it, and the
16 excavation of the PRP's confirmed that.

17 Q. Okay.

18 MR. SAAD: One other thing I believe I will be
19 able to conclude this witness, Your Honor.

20 Q. Do you recall the first time you ever met me?

21 A. First time I met you?

22 Q. Yes, sir.

23 A. Not the first time, no.

24 Q. But the first time --

25 A. I may have met you when we were trying to do

10 15 0028

1 some work at the site back in '79 or '80. I met you again
2 on the site in '91.

3 Q. 1991?

4 A. When I came out there when I became the OSC on
5 this project again and I saw you at the EPA building in I
6 think it was '89 when you came to the initial PRP meeting
7 when Kelly McCarthy I believe she was the OSC at that time.

8 Q. December 14, 1989, a meeting for all the PRP's,
9 okay?

10 A. I was not in the meeting myself.

11 Q. No, you weren't. Do you recall the time you
12 met me in '91 at the property 3655 Trousdale?

13 A. Yes.

14 Q. Okay. Do you remember when you said to me
15 before you knew who I was?

16 A. I knew who you were.

17 Q. No, you didn't.

18 THE COURT: Just ask the questions. Don't
19 argue with the witness.

20 Q. Do you remember what you said to me?

21 A. I remember what you said to me first.

22 THE COURT: Just answer the question. He asked
23 the question is do you recall what you said to Mr. Saad?
24 Do you or do you not?

25 THE WITNESS: Yes, sir.

1 THE COURT: All right. Next question.

2 A. Not in exact words. I recall what I said the
3 conversation went that Mr. Saad walked up to me and said
4 there was no contamination out here and that he owned the
5 property and there had never been any contamination here,
6 and I told Mr. Saad that he was mistaken, that I had seen
7 it and that he was wasting my time to tell me there wasn't
8 any when, you know, I had been there beforehand and had
9 seen it.

10 Q. Do you recall can you go back a little bit and
11 recall what you said prior to what you said to the group of
12 people that were standing around?

13 A. No, sir, I can't.

14 Q. Okay.

15 MR. SAAD: No further questions, Your Honor.

16 THE COURT: Okay, redirect?

17 MR. QUINN: Yes, Your Honor. Just a few, Your
18 Honor.

19 REDIRECT EXAMINATION

20 BY MR. QUINN:

21 Q. Mr. Stroud, looking at the photographs which
22 have been introduced as Exhibits 4 and 5, looking at those
23 photographs does that in any way alter your opinion as to
24 whether or not there has been a release or a threatened
25 release of hazardous substances at the site?

1 A. No, sir. As I indicated to Mr. Saad before, it
2 is obviously there was an effort here to cover up the
3 contamination and make it appear that there wasn't a
4 problem here. You know, out of sight, out of mind. That
5 seems to be one of the favorite tactics of historically
6 speaking as long as I have been in the program as a way to
7 cover up contamination that should be removed. And it
8 hasn't changed the physical aspects of the chemical aspect
9 of the chemicals that are now in contact with the ground
10 water on the site.

11 Q. What needs to be done to determine whether or
12 not there is contamination at the property and the nature
13 of that contamination?

14 A. We need to have access on the site to begin our
15 sampling and to begin determining the further extent of
16 contamination onto the CSX property and Franklin Brick
17 property.

18 Q. Thank you, Mr. Stroud.

19 MR. QUINN: No more questions of this witness,
20 Your Honor.

21 EXAMINATION BY THE COURT:

22 Q. Mr. Stroud, what has taken place since 1979?

23 A. What hasn't?

24 Q. We are 15 years down past that time, and as I
25 understood your testimony in 1979 there was a determination

1 at least on a preliminary basis that there was contaminants
2 on the property. I don't know whether the property was
3 listed on the super fund at that time.

4 A. No, sir, that was one of the problems that this
5 one did not rank on the NPL. There is not drinking water
6 close enough to get the points. The original ranking
7 system gave a lot of points to drinking water. There is
8 surface water nearby, but that did not score so, therefore,
9 it fell into the removal program which that's what on-scene
10 coordinators do. And the administration, the administrator
11 at the time I don't know if you remember the history of
12 EPA, she and the person who worked under the super fund
13 group greatly restricted our activities at sites.

14 Until she was dismissed in '83 or '84, the
15 removal program did no removal of contamination below the
16 surface. Our activities were only aimed at surface
17 problems, open pits, drums, things that were on the
18 surface. Wasn't until CERCLA was reauthorized in '86 that
19 the broad scope of our authority was recognized and we
20 began to take care of these contamination problems on NPL
21 sites as well as removal sites.

22 Q. This photo that you have introduced as Exhibit
23 2 looks like a surface contaminant problem.

24 A. But there was no -- that was '79 and there
25 wasn't anything to deal with that in '79 which would have

1 been nice if we could have.

2 Q. I thought you just testified that that's you
3 could only deal with surface contaminants?

4 A. Well, by 1981 that was covered up. That did
5 not exist like that. By the time someone came back out
6 there we did not have what we call the surplus. It is a
7 data collection point of sites you visited and sampled and,
8 you know, it has to come up on a priority. Well, this one
9 didn't come back up again until later. We proceeded on
10 with other sites in other states.

11 Q. So if I understand it, you identified this site
12 in '79 but other than identifying the site, EPA did nothing
13 further?

14 A. No, we did a lot of sampling off site. We put
15 in some monitoring wells over in the Crott farm property
16 that's three or four hundred acres adjacent to the property
17 in an effort to see if the contamination from the site was
18 moving through there. Mr. Powell could probably explain it
19 better in this type of formation monitoring wells do not
20 necessarily give you the answer you are looking for, but at
21 that time that's the technology that we had available. We
22 did sampling off site.

23 Q. What did the samples reflect?

24 A. They didn't reflect anything.

25 Q. Okay. There was none no contaminants coming

1 from the property at that time?

2 A. Well, there was no contaminants coming to those
3 wells. The wells are not as we have determined later on
4 through the evolution of the program, wells in a cars area
5 really are not the way to go. There is the dye tracing is
6 the actual method that should be used.

7 Q. Well, at that time you had no reason either to
8 believe or prove that the property was leaking or leaching
9 contaminants; is that true?

10 A. I didn't catch the first part.

11 Q. In '79 you say you set up some wells, but you
12 have said that didn't reveal that there were contaminants
13 passing through the well sites?

14 A. That's correct. Those wells that we put in.

15 Q. So having done all of that in '79, what did the
16 EPA next do in connection with this property?

17 A. I wasn't involved. There was some more
18 sampling done later on by another OSC in '85 trying to try
19 some new methods called resistive where you could check out
20 the pollution flows from the site without much luck.
21 Without being able to get on the site and do the dye test
22 thing we were pretty much handcuffed at the site. Some
23 time after '85, '86 when the law changed where we were able
24 to go after the PRP's, our policy changed to enforcement
25 first. We began gathering the names from Mr. Saad of

10 15 0034

1 people who had brought waste to the site and so the agency
2 got them on board and asked them to do the work. But it
3 has been a very slow process and very frustrating one for
4 me personally. As I said before, this stuff should have
5 been taken out of the ground in 1979. I am not happy with
6 the way this was handled as far as taking this much
7 contamination out of contact with ground water, but it was
8 always above me.

9 Q. It was above you?

10 A. In terms of management decisions within the
11 agency about how we dealt with these kind of problems,
12 buried waste.

13 Q. Well, can you tell me then what has transpired
14 since '86?

15 A. Okay. As we mentioned earlier, we finally got
16 all the PRP's on board.

17 Q. What's a PRP?

18 A. Potentially responsible party. These were
19 individuals identified by --

20 Q. Okay. And you said they were going to clean it
21 up?

22 A. They met they form a steering committee and it
23 may be led by technical. It may be led by a lawyer. They
24 come up with work plan for the agency. The agency issues
25 them some type of administrative order asking them to do

1 the work at the site.

2 Q. Did they submit a work plan?

3 A. Yes, they started work in --

4 Q. Assume that plan was approved by EPA?

5 A. Yes, approved by their approach. They were to
6 characterize the site and to determine the contamination
7 there.

8 Q. All right, did they do that?

9 A. They did not finish it.

10 Q. Why not?

11 A. Well, think at the time, as I said, the
12 railroad thing with the possible caving in of the
13 embankment restricted them from finding out how deep it
14 went, and then for some reason they decided not to see what
15 the lateral extent into the Franklin Brick area, they sort
16 of stopped. At the time they said well, we know we have
17 contamination here, and we're going to do something about
18 it but we're not going to dig any further.

19 Q. Did they submit a final report as to what they
20 the extent of the contaminants that they found and the work
21 they had performed?

22 A. Yes, they did.

23 Q. And what did the EPA do next?

24 A. Well, we reviewed their -- they offered up a
25 number of options starting back in '92 for the treatment of

1 the site. The first one saw vapor extraction which is not
2 practical at this kind of site. And I had one of EPA's
3 experts comment on that, and we said that was not the
4 proper remedy so they went back, did some more sampling and
5 came back with another remedy that said they wanted to just
6 take this oily water that was below the surface this
7 perched water table that sits in there from two feet to
8 past 12 feet and wanted to try to suck the oil off of that
9 that was on the perched water. Well, I found that to be
10 unsatisfactory because the source of the oil was still in
11 there. All the sludgy material, the hazardous substances
12 were all still into that perched water table. And that
13 would not take care of the source. The source would still
14 be in the ground with the potential to contaminate ground
15 water further down grade.

16 Q. So having reviewed that and found that not to
17 be adequate, what did EPA do then?

18 A. We wrote them a letter to that effect, and we
19 didn't hear from them for a while. I am not sure how long
20 it was. And then the next time they wrote back and then
21 they said they decided that there wasn't a problem there
22 and that they weren't going to proceed any further.

23 Q. And when was that?

24 A. Seems like that was -- not quite sure, April of
25 '93 I believe, and then that's when we started trying to at

1 that time the PRP's were also trying to get an extension of
2 access from Mr. Saad. He had already given them six months
3 and he didn't want to give them any more so our attorneys
4 started some action towards getting the access so that EPA
5 could go in there and finish characterizing the site and
6 proceed with the removal.

7 Q. Okay.

8 THE COURT: Any more questions, Mr. Quinn, you
9 have after my Court's questions with regard to this
10 witness?

11 MR. QUINN: No, Your Honor. Thank you.

12 THE COURT: Mr. Saad, do you have any
13 additional questions?

14 MR. SAAD: Yes, sir, Your Honor, if you don't
15 mind.

16 THE COURT: All right, go ahead.

17 CROSS EXAMINATION (Continued)

18 BY MR. SAAID:

19 Q. Mr. Stroud, does the name Rita Ford mean
20 anything to you?

21 A. Yes, sir, she was the second OSC after Kelly
22 McCarthy left to go to California, she took over the Saad
23 site.

24 Q. Thank you. I was going to mention her name
25 next. Did you have any conversation with these two after

1 they conducted all of their work and appearances on the
2 property working with me, the PRP's in relation to what
3 contaminants was on the Saad property only?

4 A. We didn't discuss it that way. They used to
5 talk to me about the site since I had the knowledge of it
6 and I was the senior person, they used to --

7 Q. Well, in relation to their findings while they
8 were there and you were not, did they discuss with you
9 whether they did find a lot of pollution or they did not?

10 A. Yes, they did find contamination there.

11 Q. And you swear to that?

12 A. Yes, sir.

13 Q. Okay. Thank you.

14 (WITNESS EXCUSED.)

15 * * *

16 THE COURT: Next witness, Mr. Quinn.

17 GREG POWELL was called, and being duly sworn,
18 was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. QUINN:

21 Q. Mr. Powell, please tell us for whom you work
22 and your job title.

23 A. I work for the Environmental Protection Agency
24 environmental response team, and my job title is
25 environmental scientist.

1 Q. What do you do in that position?

2 A. My primary responsibilities are to provide
3 technical assistance to all ten EPA regions throughout the
4 United States, primarily in the areas of hydrogeological
5 investigations and hazardous waste site clean-up.

6 Q. What work have you done in relation to the site
7 that we have been talking about here today?

8 A. I was called by Mr. Stroud to go out and
9 overview some of the work that the responsible party
10 contractor was conducting in December of '92. I went out
11 to the site and overviewed the work that was going on. I
12 have also reviewed the report that was submitted by the
13 contractor in April of '93.

14 Q. Like to go a little bit into your background,
15 sir. Were you ever an on-scene coordinator?

16 A. Yes, I was. I was an on-scene coordinator out
17 of region four in Atlanta 1987 to 1990.

18 Q. And were you ever a remedial project manager?

19 A. Prior to that 1984 to 1987 I was a remedial
20 project manager.

21 Q. What does a remedial project manager do?

22 A. Primary functions are in the super fund program
23 to work on the investigation clean-up of national priority
24 list sites.

25 Q. Sir, do you have an undergraduate degree in

1 science?

2 A. Yes, I have a Bachelor's of Science and a
3 Master's of Science in geography from Western Kentucky
4 University.

5 Q. Do you hold any other certifications or
6 recognition?

7 A. I am a certified professional geologist of the
8 American Institute of Professional Geologists.
9 Professional geologist in the states of Tennessee, Florida
10 and Indiana.

11 Q. What do you have to do to be recognized as a
12 professional geologist in the State of Tennessee?

13 A. In the State of Tennessee it is basically you
14 have to have a certain degree of experience and fill out
15 basically applications and what your experience and
16 education are reviewed to see if you are qualified for that
17 title.

18 Q. And did you pass that review?

19 A. Yes.

20 Q. What is the society that you mentioned?

21 A. The American Institute of Professional
22 Geologists is a national professional society in which
23 peers within your group who are certified professional
24 geologists sponsor you to become an I guess a nationally
25 certified geologist based on your experience. You have to

1 meet minimal education and experience to even be
2 considered.

3 Q. In addition to your education and experience as
4 a geologist, what other aspects of experience have prepared
5 you to work in the position you now hold?

6 A. Well, I have worked numerous ground water sites
7 throughout the United States in the last approximately nine
8 and a half years. I have worked on major oil spills,
9 particularly underground oil type clean-ups such as the
10 Picket Road or Fairfax Terminal spill in Washington, D.C.,
11 of most recent occurrence.

12 Q. How many emergency situations did you respond
13 to as an on-scene coordinator?

14 A. I couldn't even answer that. I never counted
15 them. I am sorry.

16 Q. What percentage of your time if you can tell me
17 do you spend in responding to hazardous, the release of
18 hazardous substances or pollutants or contaminants now?

19 A. I travel 80 percent of the time approximately
20 every year.

21 Q. And how many projects are you currently working
22 on?

23 A. I'd say a minimum of ten.

24 Q. And where -- withdrawn. Other than the one in
25 Tennessee, in what other states are you working?

1 A. Wyoming, Montana, Pennsylvania, Florida, South
2 Carolina just to name a few.

3 Q. In your experience as a remedial project
4 manager, as on-scene coordinator and in your current
5 position, have you ever had to make a determination as to
6 whether there was a release or threat of release of
7 hazardous substances?

8 A. Yes.

9 Q. How many times have you done that, would you
10 estimate?

11 A. I'd say at least fifty times.

12 Q. With regard to your work in ground water and
13 the migration of ground water, can you elaborate for us
14 what you do in that area? What do you do with regard to
15 ground water?

16 A. I provide consultation to the OSC's on how to
17 develop a ground water investigation, how to install pump
18 and treat systems to treat contaminated ground water. Also
19 advise them on certain geophysical techniques to evaluate
20 sub surface geology.

21 Q. How long have you been doing that?

22 A. Well, I have been doing it ever since I have
23 been at the agency. I have been besides my job functions I
24 would also assist other RPM's or OSC's.

25 Q. Have you ever testified in a court on behalf of

1 the EPA in regard to ground water?

2 A. No.

3 Q. Have you ever testified for EPA on any matter?

4 A. No.

5 Q. Have you ever had your deposition taken on
6 behalf of EPA?

7 A. Yes.

8 Q. How many times?

9 A. Twice.

10 Q. Have you ever sworn out declarations or
11 affidavits in support of relief requested by the EPA?

12 A. Yes.

13 Q. How many times?

14 A. Three that I can recall.

15 MR. QUINN: Your Honor, the United States would
16 proffer Mr. Greg Powell as an expert in the field of
17 emergency responses to releases and threatened releases of
18 hazardous substances into the environment in particular
19 with regard to the activities necessary to assess ground
20 water contamination.

21 THE COURT: I am not sure you covered all that,
22 Mr. Quinn, but I will let him testify.

23 MR. QUINN: Okay, thank you, Your Honor.

24 THE COURT: I will kind of monitor where we go
25 with that.

1 MR. QUINN: Thank you.

2 Q. Mr. Powell, do you have a reason to believe
3 that there is a release or a threat of release of hazardous
4 substances or contaminants or pollutant into the ground
5 water at or from the site?

6 A. Yes, I do.

7 Q. And what forms your basis of for that opinion?

8 A. Based on my visual observations of the
9 trenching activities in December of '92 and also the data
10 that I have reviewed that was provided by the responsible
11 parties.

12 Q. What in your opinion needs to be done to
13 determine the extent and the nature of the ground water
14 contamination at the site and at properties adjacent to the
15 site?

16 A. Well, the first thing which I have recommended
17 is that a dye trace be conducted to determine sub surface
18 flow routes of contamination and the geology that you have
19 here in Middle Tennessee you have a solution limestones
20 which can rapidly transport contaminants to surface waters
21 or potentially drinking water supplies. It is kind of just
22 like a sub surface storm system in which any type of
23 contaminant that are entered into it can rapidly be
24 transported.

25 Q. You covered an awful lot of information in your

1 response, sir. What is dye testing?

2 A. Dye testing is taking a just a dye, colored dye
3 as you could see you can visibly see the dye when you
4 inject it into the ground. However, by the time it is
5 diluted through the system you have to use instrumentation
6 which is called a fluorometer to detect concentrations of
7 that dye.

8 Q. How do you inject the dye into the ground?

9 A. Well, there are various ways. The most simple
10 means is to take a known quantity of dye and dump it into a
11 known source area of contamination and then set up
12 receptacles at springs along streams to see if the dye is
13 discharged at that point.

14 Q. What is that? Tell us about the contamination
15 from the site.

16 A. Well, what it tells you is that you have a
17 quantifiable dye trace show from where you injected that
18 dye to the point where you detected that that the
19 contamination could flow from that point A to point B.

20 Q. What other things can you do to determine the
21 nature of the geology or the migration of ground water from
22 a site?

23 A. You can do surface geophysics. Those type
24 techniques will tell you possibly where conduits are or
25 solution cavities where contamination could be travelling.

1 You could also install wells as another method.

2 Q. Have you has EPA thought about installing wells
3 at this site, if you know?

4 A. At this time without additional information it
5 would be premature to install wells because in this geology
6 you could install well and not hit ground water but move
7 five feet over and install a well and hit a cave passage
8 that could contain water.

9 Q. What would that do with regard to your
10 determination as to the migration of contaminants?

11 A. Well, if you don't do certain techniques such
12 as geophysics to try and identify where these potential
13 passages are, by installing wells you may not hit the
14 pathway in which the contaminants are moving.

15 Q. What does surface geophysics do?

16 A. Basically use electromagnetic techniques set up
17 a field in the earth. You take the readings a cave passage
18 that's transporting water will show a higher electro-
19 magnetic response because of the higher total dissolved
20 solids concentration in the water and so you will have a
21 greater response on your electromagnetic reading.

22 Q. Do you know what the geological outlay is
23 underneath the site at this point in time?

24 A. Based on the reports I have seen, there appears
25 to be a perched ground water laying. What is the ground

1 water is perched on a clay layer and below that is a
2 limestone at approximately 40 feet that's highly solution
3 and that's where your primary contaminant flow would occur
4 is through this lower limestone.

5 Q. What do you propose that EPA does is if it
6 gains access to the property?

7 A. I propose that they conduct surface dye tracing
8 in which they inject a dye as a surface point. Also look
9 at other potential sources in the area to do dye tracing.

10 Q. What would that tell us that we don't already
11 know?

12 A. Tell us a lot more. Tell us where the
13 contaminants are moving in the sub surface. If the dye
14 trace is successful, it will show you where the out flow
15 points are of that dye.

16 MR. QUINN: Your Honor, I have no more
17 questions of Mr. Powell.

18 THE COURT: Okay, thank you. Mr. Saad, any
19 questions?

20 MR. SAAD: Yes, sir.

21 CROSS EXAMINATION

22 BY MR. SAAD:

23 Q. I am sorry, I didn't your first name?

24 A. Greg.

25 Q. Greg Powell?

1 A. Uh-huh.

2 Q. You have been on this site working before?

3 A. I was just on the site in December of '92 when
4 the responsible party contractor was doing their excavation
5 work.

6 Q. I remember your name, but I just don't remember
7 your face because I was there for most all the activities
8 that went on. You stated just a second ago that if this
9 dye testing is successful. What's the percentage of
10 success, failure and so forth on this type of test?

11 A. Generally the tests are very successful. I
12 have run these tests ever since I was in graduate school.
13 As long as you have springs in the area, you are pretty
14 much going to see a successful trace at some point in time.
15 It may not be immediate. It may take several months or
16 even longer.

17 Q. More than a year?

18 A. If you are not seeing the dye in over a year I
19 don't think I'd have a successful trace.

20 Q. Either that or there is no contamination on
21 that site; right?

22 A. Either that or there is no connection to that
23 site with those springs, yes.

24 Q. Percentages, what is the percentage of failure
25 or success from these tests?

1 A. Like I said, I don't know the percentages, but
2 fairly high.

3 Q. As far as you know possibility there is no
4 success?

5 A. That's correct.

6 Q. Okay.

7 MR. SAAD: Thank you, Your Honor.

8 THE COURT: Anything further?

9 MR. QUINN: One question, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. QUINN:

12 Q. What would geophysics and the dye testing tell
13 us about the possibility of the migration of contaminants
14 or pollutants or hazardous substances off the property from
15 this site?

16 A. Well, what it will tell you is that you can get
17 a quantifiable or a definite answer as to whether
18 contaminants are being discharged from that site to springs
19 where you set up your dye receptacles.

20 Q. And will that information enable the EPA to
21 better determine a response that is necessary?

22 A. Absolutely.

23 Q. Thank you.

24 MR. QUINN: No more questions, Your Honor.

25 THE COURT: Anything further, Mr. Saad?

1 MR. SAAD: No, sir.

2 (WITNESS EXCUSED.)

3 * * *

4 THE COURT: Next witness.

5 BETH DAVIS was called, and being duly sworn,
6 was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MS. COBB:

9 Q. Would you please state your name and address,
10 please.

11 A. Elizabeth Bolton Davis. I live at 1030
12 Arbordale Drive, Decatur, Georgia.

13 Q. What's your profession?

14 A. I am an attorney with the Environmental
15 Protection Agency.

16 Q. How long worked for the Environmental
17 Protection Agency?

18 A. Since September of 1991.

19 Q. And in general what are your duties as an
20 attorney?

21 A. I represent EPA region four with regard to a
22 variety of matters with its various program offices whether
23 they be water, waste, any number of matters that regional
24 administration might want advice or counsel regarding.

25 Q. Were you ever assigned to the Saad Trousdale

1 Road site in Nashville, Tennessee?

2 A. I was.

3 Q. And when were you first assigned to this site?

4 A. September of 1991.

5 Q. And would you tell the Court exactly or give
6 him an idea what an administrative order on consent or by
7 consent is?

8 A. An administrative order on consent is a
9 document, a contract of sorts, entered into between the
10 agency and private parties, typically potentially
11 responsible parties regarding work to be done at a site,
12 cost to be reimbursed to the agency regarding a site, that
13 sort of thing.

14 Q. Are you familiar with an administrative order
15 on consent that was entered into on August 12, 1992, for
16 work to be done at the Saad site?

17 A. I am.

18 Q. And did Ellis or Kathy Saad sign that order?

19 A. No, they did not.

20 Q. Who did sign that order?

21 A. Approximately 200 potentially responsible
22 parties that were generators of hazardous waste that was
23 sent to the site.

24 Q. And do the terms of that order with the PRP's
25 or the signing orders required to do anything to gain

1 access to the property?

2 A. They were.

3 Q. And could you give us an idea what they were
4 supposed to do?

5 A. The respondents to the order had an obligation
6 to provide EPA access to the site or to the extent that
7 they did not own the site property to use reasonable
8 efforts to obtain access to the site.

9 MS. COBB: And, Your Honor, I'd like to give
10 the witness now what's been marked for identification as
11 Government's Exhibit I think number 6 we're up to.

12 THE COURT: Okay.

13 MS. COBB: Also one for Your Honor. And Mr.
14 Saad a copy also.

15 Q. Ms. Davis, do you recognize this document?

16 A. I do.

17 Q. And could you identify this document for the
18 Court, please?

19 A. This is the final access agreement entered into
20 between the respondents to the 1992 administrative order on
21 consent and Ellis and Kathy Saad.

22 Q. And when did that access order expire?

23 A. April 1, 1993.

24 Q. And would you please read into the record
25 paragraph 7 of that order?

1 A. Whereas the grantor has been informed that
2 completion of the work will likely take longer than the
3 time provided herein, it has been informed by U.S. EPA and
4 the committee that in that event they will request an
5 extension of the access provided by the agreement.

6 Q. Thank you, Ms. Davis.

7 MR. SAAD: Excuse me, Your Honor. Did you not
8 say number seven?

9 MS. COBB: Yes, sir, I was counting from right
10 here paragraph number seven.

11 MR. SAAD: All right, thank you.

12 MS. COBB: You are welcome.

13 Q. Ms. Davis, when did EPA first become aware of
14 the problems that PRP's were having in gaining access to
15 the site?

16 A. When representatives of the steering committee
17 contacted me, and I believe that was in approximately
18 February of 1993.

19 Q. And did the EPA request that the Saads extend
20 the agreement for access?

21 A. We did.

22 Q. And why did EPA need to request this extension?

23 A. EPA determined that the steering committee had
24 used reasonable efforts to attempt to obtain access to the
25 site and then the next step was for EPA to make that

1 request on its own behalf.

2 MS. COBB: And I am going to give to the
3 witness now what's been marked for identification as
4 Government's Exhibit Number 7.

5 THE COURT: You want six entered into evidence?

6 MS. COBB: Yes, sir. Thank you.

7 THE COURT: Exhibit 6 will be admitted.

8 MS. COBB: And I am also giving Mr. Saad a
9 copy.

10 THE COURT: Exhibit 6 will be the access
11 agreement.

12 Q. Ms. Davis, do you recognize this document?

13 A. Yes, I do.

14 Q. And could you tell the Court what this document
15 is?

16 A. This is the letter that I drafted that EPA sent
17 to Mr. and Mrs. Saad requesting that the Saads agree to
18 provide access to EPA.

19 Q. And how was this letter sent?

20 A. By certified mail, return receipt requested.

21 Q. And was return receipt received?

22 A. No, it was not.

23 Q. And did you receive the letter back?

24 A. I did. The entire package was returned
25 refused.

1 Q. And did you attempt to send the letter again?

2 A. I did.

3 Q. And what happened the second time?

4 A. Again it was returned refused.

5 Q. And then what did EPA do next in its effort to
6 seek access to the site?

7 A. EPA issued an administrative order requiring
8 Mr. and Mrs. Saad to provide access to the site.

9 Q. And, Ms. Davis, did you have a meeting with Mr.
10 Saad to discuss access?

11 A. I did.

12 Q. And could you give us a few details of that
13 meeting, please?

14 A. I met with Mr. Saad in the lobby of the hotel
15 in Nashville where I was staying at the time, and I had a
16 copy of the signed administrative order for access with me.
17 The purpose of the meeting was to explain to Mr. Saad and
18 his son John that was with him as well at that meeting to
19 explain to them the history of the site, the need for
20 additional access and to serve the administrative order on
21 Mr. Saad.

22 Q. And you explained to Mr. Saad at that time
23 EPA's right and authority to access and why we needed it?

24 A. I did. That was part of our discussions.

25 Q. And did you offer to give Mr. Saad at that

1 point the administrative order?

2 A. I did.

3 Q. And did Mr. Saad accept the order?

4 A. No, he did not. He refused it.

5 Q. And how did he respond?

6 A. When I tendered the order to Mr. Saad we were
7 both standing. He refused to take it. He leaned towards
8 me, pointed his finger in my face inches from my face and
9 said: I don't want it. I am not taking it and I don't
10 give a shit what you want, woman.

11 Q. And, Ms. Davis, let me ask you at any time did
12 you feel threatened in that meeting?

13 A. I did.

14 Q. What did eventually did EPA do in order to gain
15 access to this property or to attempt to gain access to
16 this property?

17 A. The next step was to seek remedy through this
18 court. We referred the case to the Department of Justice.

19 Q. And at any time did you have the order
20 eventually served on Mr. Saad?

21 A. Yes. I did next refer the administrative order
22 to United States Marshal for service.

23 Q. And was that order in fact served on Mr. Saad?

24 A. Yes, it was.

25 Q. Ms. Davis, what effect has the Saads' refusal

1 to grant access had on your work load?

2 A. It has increased my work load significantly.

3 Q. Has a second attorney been assigned to that
4 site?

5 A. Yes.

6 Q. What effect has the Saads' refusing to grant
7 access had on the plaintiff efforts at the sites?

8 A. Obviously it has halted the clean-up efforts
9 at the site.

10 Q. What effect has the Saads' refusal to obey an
11 order had on the authority of the EPA?

12 A. Well, there is the risk that respondents to an
13 order refusing to comply with that order can certainly
14 compromise the agency's ability to move forward at other
15 sites.

16 MS. COBB: Your Honor, if I could confer with
17 co-counsel just one second.

18 THE COURT: All right.

19 MS. COBB: Your Honor, at this time I'd like to
20 offer the second exhibit, Exhibit Number 7, into evidence.

21 THE COURT: All right.

22 MS. COBB: And I have no further questions.

23 Ms. Davis, if Mr. Saad has any questions for you, please
24 answer them.

25 THE COURT: Exhibit 7 offered by the government

1 in the case will be the letter from the EPA to Mr. and Mrs.
2 Saad at their office, I guess their home in Antioch,
3 Tennessee, along with the return receipt that shows it was
4 refused.

5 Okay, Mr. Saad, you may ask this witness.

6 CROSS EXAMINATION

7 BY MR. SAAD:

8 Q. Hello, Ms. Davis. It is good to see you again.
9 Did you -- I believe you stated you came on the scene in
10 '92?

11 A. Ninety-one.

12 Q. 1991?

13 A. Yes, sir.

14 Q. The first time I ever knew or heard of you was
15 at the meeting at the time you were calling us to meet and
16 we met at the motel eventually.

17 A. No, I believe the first time we met was in 1992
18 regarding an initial dispute regarding access before the
19 last agreement was signed.

20 Q. When did you start to work for the EPA in
21 Atlanta?

22 A. September of 1991.

23 Q. And you immediately were assigned or involved
24 in the 3655 Trousdale site?

25 A. Yes, sir.

1 Q. Okay. And that's that was the first and only
2 time from that time on that we talked or met or discussed
3 things; right? You weren't there in '89, '90 or --

4 A. That's right.

5 Q. -- prior to your coming to work?

6 A. That's right.

7 Q. Okay, thank you.

8 THE COURT: Anything else?

9 MS. COBB: No, sir. Thank you

10 (WITNESS EXCUSED.)

11 * * *

12 THE COURT: All right, does the government have
13 any more proof?

14 MR. QUINN: No more proof, Your Honor.

15 THE COURT: Okay. Mr. Saad, now you may
16 present any proof that you have, including your own
17 testimony if you wish.

18 MR. SAAD: Yes, Your Honor. Can I bring my
19 book up there?

20 THE COURT: Sure.

21 **ELLIS SAAD** was called, and being duly sworn,
22 testified as follows:

23 DIRECT TESTIMONY:

24 THE COURT: All right, Mr. Saad, obviously you
25 don't have to ask yourself any questions, but you can

1 testify on your own behalf in any manner that you wish.

2 THE WITNESS: Okay. Your Honor, I'd like to
3 first start by giving you a history of the past. Since
4 1989 I was originally first working with the State to clean
5 the place up, and I bought it in '88 to do just that, to
6 clear the equipment tanks and clean up the land.

7 THE COURT: You bought from whom?

8 THE WITNESS: From the mortgage company that
9 had repossessed it from the original my family that owned
10 it. My brother originally owned the business and operated
11 it.

12 THE COURT: And it was foreclosed?

13 THE WITNESS: Yes, sir.

14 THE COURT: And so at the foreclosure sale you
15 bought it back?

16 THE WITNESS: Well, it wasn't a foreclosure
17 sale.

18 THE COURT: Okay, it was negotiated sale
19 between you and the mortgagee?

20 THE WITNESS: And the mortgage company.

21 THE COURT: Mortgagor, okay.

22 THE WITNESS: They had tried selling it on
23 numerous occasions and never were able to.

24 And then in 1989 --

25 THE COURT: You bought it in '88?

1 THE WITNESS I bought it in '88. In 1989 I
2 before I bought it I called the EPA in Atlanta, called in
3 Washington, called everywhere I could to find out what
4 there was on record of any contamination, and I was told
5 there was none and there was nothing on that site. There
6 was two other sites in Davidson County, Rutherford County
7 that the EPA were looking into and cleaning up or someone
8 had cleaned up. I am not even sure if the EPA did it. The
9 Nissan Manufacturing plant is sitting on one of the sites.

10 Then in after the State and I worked out an
11 arrangement how we was going to clean it up, within less
12 than a year's time we heard from EPA out of Atlanta that
13 they were going to take over and do it. I submitted to
14 Rita Ford and Ms. McCarthy a plan to clean it up, and of
15 course trying to come up with the funds I was unable to
16 come with enough funds to clean it up. And so that's when
17 they got the PRP's involved in cleaning it up. And since
18 then I have worked with and I have signed numerous access
19 orders to let them clean it up and do what needs to be
20 done. I am an environmentalist myself. I insist on
21 cleaning up the environment. There was no contamination
22 directly by my family or me or anyone at any time.

23 We proceeded with PRP's and the Environmental
24 Protection area representatives when they were there to
25 clean it up and on I can't -- I know I gave them at least

1 four or five six-months access agreements to clean up. And
2 the only time I refused and the only time I stopped was
3 approximately in November of '92 a John Jawor, J-A-W-O-R,
4 one of the PRP's attorneys out of Saint Louis called and
5 asked for access, and in talking with him he told me that
6 they wanted that there was no contamination on my property
7 but they needed to clean up behind --

8 MR. QUINN: Objection, Your Honor.

9 THE COURT: All right, that's hearsay evidence.

10 THE WITNESS: Right.

11 THE COURT: So I will not be able to receive
12 testimony of what someone told you unless it involved
13 the -- was this John Jawor with the EPA?

14 THE WITNESS: He was an attorney representing
15 the one of the PRP members, responsible parties. He told
16 me they wanted access to clean up the pond that was
17 underneath the brick yard building, the Franklin Brick
18 property. And I told him, you know, I didn't feel that I
19 should have to give them my property use to clean up that.
20 That pond was a concrete lined pond. I saw it. Saw it for
21 myself. And when they built the brick yard building in
22 approximately 1989-'90 -- I'm sorry, Your Honor, '79 and
23 '80 is when that was built. They it was all cleaned out.
24 My brother received a contract from the railroad to clean
25 the pond out because the pond belonged to the railroad and

1 it is not none of it was ever on our property.

2 Anyway, he told me that's what they wanted to
3 do, and that's when I refused. That's the only thing
4 anyone has ever asked me or told me they wanted to do that
5 I said I wouldn't do. I offered to work out agreement to
6 let him use that land he needs to tunnel under their
7 building to extract the sludge or something that's
8 supposedly supposed to be still under there.

9 And in summation, that's about we are up to
10 this point now today. I am more than happy to work with
11 the EPA and the PRP's. I have had recent conversations
12 with Drew Goddard about it. He is another attorney for
13 them. And I am more than happy to give them access to
14 clean up anything that needs to be cleaned up. I want it
15 cleaned up. But I can't vacate my building and stop my
16 business. Hey, I have got a family. I will go bankrupt.
17 And I don't feel that they need the whole access of the
18 property and for me to vacate it. And I have never
19 interfered with any of their cleaning up activities in the
20 past. If anything, I have helped. I have seen helped them
21 dispose of and remove some of the cut-up tanks and things.

22 I would like to submit this photo to Your Honor
23 and the Court as another exhibit I guess it will be 8 to
24 show you the way it looked there at the beginning and
25 before EPA entered it the picture to do anything or PRP's,

1 I had already removed 90 percent of the tanks that was on
2 the property and contained all the sludge in two tanks. I
3 used to during the seventies I worked for Chevron
4 dismantling and moving bulk storage tanks, storage
5 facilities.

6 THE COURT: Okay. Cross examination, Mr.
7 Quinn?

8 MR. QUINN: Thank you, Your Honor.

9 CROSS EXAMINATION

10 BY MR. QUINN:

11 Q. Sir, your family owned the property before it
12 was you purchased it out of from the mortgage company; is
13 that correct?

14 A. Right.

15 Q. What was the business that was conducted at
16 that property?

17 A. When my family when my brother had it?

18 Q. Yes.

19 A. Waste oil transporting facilities. Storage
20 facilities.

21 Q. What exactly went on at the property?

22 A. They drove around town, picked up gathered
23 waste oil from car dealers and service stations and stored
24 it in that location in order to ship it to refineries.

25 Q. And that started about 1971; is that correct?

1 A. Well, they acquired the property and built
2 there in 1974 I believe it was.

3 Q. Okay, and how long did that continue?

4 A. Until 1980 when my brother filed bankruptcy.

5 Q. How much waste oil was brought in on a daily
6 basis if you can tell me?

7 A. I couldn't swear about anything.

8 Q. Did you work there, sir?

9 A. I built the building, and I am basically in the
10 construction and remodeling business. I have done a lot of
11 construction all my life.

12 Q. Did you work at the site with regard to
13 handling of waste?

14 A. Only in reference to helping him build the
15 building, putting in pumps and tanks and pouring concrete
16 dykes underneath everything. All the tanks there had
17 concrete dykes under it which was tore up in the last two
18 or three years.

19 Q. During the time that you were there did you
20 happen to see any spills of waste oil on the ground?

21 A. No, sir, there was none.

22 Q. There were never any spills during the time
23 that you went there?

24 A. No. I say it was all concrete as that picture
25 that I just gave you will show you there was a concrete pad

1 underneath all the tanks. I built it and put it there
2 myself. I can swear to that. And it had a container wall
3 all around it to contain everything and a tank that caught
4 everything in a trough that pumped it back up into a
5 storage.

6 Q. What happened when it rained, sir?

7 A. It was covered.

8 Q. The tanks were covered?

9 A. Yes, sir, the area and the facilities around
10 the tanks had a covering over it.

11 Q. What is the area that we showed you in Exhibit
12 Number 2 which I believe the Court has, picture of an oil
13 pit. In 1979 was that one of the concrete lined pits you
14 were talking about?

15 A. This is a concrete lined pit that was there
16 years prior to my family ever acquiring the property. At
17 one time it was originally a concrete ready-mix, plant and
18 that's where they dumped the ready-mix left over from the
19 trucks, and the railroad was using it as a dumping pit from
20 that last picture I just submitted shows the railroad
21 facilities in the back and to the left back of that picture
22 is the railroad's recycling plant where they trucked
23 materials from that hole over to this pond for by septic
24 tank vendors.

25 Q. So that picture shows a pit which is not

1 covered; is that correct?

2 A. Yeah.

3 Q. What happened when it rained, sir?

4 A. It -- I never saw that run over or get so much
5 water in it that it would spill over, if that's what you
6 are getting at.

7 Q. What are those drums in the photograph too?

8 A. You know, I see one, two drums. I don't know.

9 Q. Do you know what was in those drums, sir?

10 A. No.

11 Q. Do you know what those drums were doing on the
12 property?

13 A. No. They might have been -- well, I can tell
14 you, yes, sir, I do remember. I know they used them
15 occasionally to set a -- used them like a support to get a
16 skimmer like thing on it.

17 Q. What is the skimmer used for, sir?

18 A. To skim off the top of the thing to pump it
19 out.

20 Q. When the property was -- withdrawn. When you
21 acquired the property, was that concrete pit still there?

22 A. No, sir. Not -- that pit has not been there
23 since 1979.

24 Q. Was it dug up?

25 A. It was removed and cleaned out and drained, and

1 the Franklin Brick building is sitting on top of it.

2 Q. Where did the oil from that property go?

3 A. To a Metro sewerage treatment plant.

4 Q. How did it get there?

5 A. My brother had an agreement with railroad to
6 suck it all out with some of his trucks, and they did send
7 in some septic tank trucks too just, you know, local
8 companies and they sucked it all out and pumped it out and
9 carried to Metro Public Works Treatment sewerage treatment
10 plant.

11 Q. What was the name of the company that did that?

12 A. Other than my brother?

13 Q. Yes.

14 A. Let me think a minute. I am not even sure if
15 they are still around.

16 Q. Do you not remember the name?

17 A. I could come up with it. I might have to delve
18 through some records.

19 Q. What happened to the concrete that was there
20 when you say it got torn up?

21 A. Well, I know when they were building the
22 Franklin Brick building they busted through it and went
23 through it, but, you know, the sludge, it was cleaned out
24 pretty clean to the -- I never saw. I did not see it
25 completely finished, but I know they cleaned it out pretty

1 good before they busted through it and built the building.

2 Q. Do you have any sampling data indicating that
3 there are no hazardous substances at your property?

4 A. Yes, sir.

5 Q. Where are they, sir?

6 A. I have some at home and some here with me.

7 Q. Who did those testings?

8 A. PRP's.

9 Q. What do these testings say?

10 A. Well, any contaminations that were found they
11 were below minimum allowable levels.

12 Q. So there were contaminations found?

13 A. Yeah, there were some there. I am not going to
14 deny it.

15 Q. Do you know where that contamination came from?

16 A. Well, all the contamination that I am aware
17 of that I have any records of or proof was found in the
18 north -- in the southwest corner where the pond was.

19 Q. Southwest corner of your property?

20 A. Yes.

21 Q. So there was contamination on the southwest
22 corner of your property?

23 A. I am sure there was a little at one time. At
24 one time Franklin Brick had waste oil drums sitting right
25 on the property line right in the back letting them run

1 over and flooding and spilling all over the road. I
2 believe some of the EPA pictures were there one time took
3 pictures, and they were instructed to remove them.

4 Q. Were those drums spilling onto your property?

5 A. Yes, sir.

6 Q. When was that, sir?

7 A. About 1991, '92. I believe it was in late '91.

8 Q. Was that spilled?

9 A. It was one other occasions we went there and I
10 had give them access, and we went to start cleaning up some
11 more and testing some more and all that, which that
12 property has been dug up from one end to the other up to
13 six feet deep which by all the testing and work the PRP's
14 have already done.

15 Q. Sir, why didn't you accept EPA's letter that
16 was sent March 25, 1993?

17 A. Are we talking about the same letter that Mr.
18 Davis tried to present to me?

19 Q. Yes.

20 A. I told him, you know, I wasn't interested in
21 any more levels that didn't explain and tell me exactly
22 what you wanted to do and why and how long it would take
23 because all I was getting out of them at that time was sign
24 this agreement or else. Or else we'll do this to you.

25 Q. Are you saying the EPA threatened you, sir?

1 A. Yes, sir.

2 Q. Who how did they threaten you?

3 A. I was told they could do this to me, fine me,
4 have me locked up. I was told that.

5 Q. Are you telling us under testimony today that
6 the representatives of the EPA said that you could be
7 locked up?

8 A. Yes, sir.

9 Q. Who said that?

10 A. Let's see.

11 Q. Sir, do you realize -- who said that, sir?

12 A. Oh, I'm sorry, it wasn't EPA. It was the
13 PRP's.

14 Q. Who from the PRP?

15 A. Attorney.

16 Q. Said you could be looked up, sir?

17 A. Said I could be locked up.

18 Q. Yes, sir, you testified --

19 A. If I was found guilty I could be locked up.

20 Q. Who said that?

21 A. I have been told that by numerous people
22 attorneys and --

23 Q. Who?

24 A. Fred -- I mean Drew Goddard.

25 Q. Did Fred Stroud say that you could be locked

1 up?

2 A. He said y'all could impose penalties on me and
3 I could be locked up and everything.

4 Q. Fred Stroud said you could be locked up?

5 A. Yes.

6 MR. QUINN: Your Honor, at the conclusion of
7 Mr. Saad's testimony I would like to recall Fred Stroud to
8 the witness stand.

9 THE COURT: All right.

10 Q. Did anybody else?

11 A. He also told me if we are going to go ahead
12 with all this, he also told me at the meeting at the
13 property if it was the last thing he ever does he was going
14 to have my brother locked up.

15 Q. He said that, sir?

16 A. He said that to me in front of me and numerous
17 PRP's.

18 Q. For what reason?

19 A. When I asked him, he walked away. And I said
20 well, under what rights, what conditions or for what
21 reasons? He said because I have the right, and he showed
22 me his badge.

23 Q. Who else from EPA said that you could be locked
24 up?

25 A. I mean I have met every time there is a change

1 in command of EPA I have to go over this all over again.

2 Q. Sir, who else from EPA said you can be locked
3 up?

4 A. Right now I can't remember, but I will give you
5 a list of the names. I have copies of everything at home.

6 Q. Isn't it a fact you can't remember the names
7 because that never happened, sir?

8 A. It did.

9 Q. Who said it?

10 A. I have been told that on numerous occasion.

11 Q. By whom?

12 A. Numerous representatives of EPA.

13 Q. Sir, why didn't you accept the March order from
14 EPA?

15 A. March 25, '93?

16 Q. Yes.

17 A. I don't recall why. I just got to where it may
18 have been it was I didn't go to the post office to pick it
19 up, if that's the one you are talking about. They sent it
20 back before I had a chance to go there.

21 Q. Why didn't you accept the administrative order
22 from Ms. Davis?

23 A. Because I asked her for a copy and she didn't
24 have copy for me. She just wanted me to sign it. I said
25 I'd rather go look at it and read it and then I'll get with

1 you and sign it.

2 Q. Did you offer to go to a copy machine?

3 A. I told her she could mail it to me not
4 registered mail because I have to go to the post office to
5 pick it up.

6 Q. Do you remember getting a copy of the order
7 from Deputy United States Marshal?

8 A. Yes.

9 Q. Do you remember reading the order?

10 A. Yes.

11 Q. Why didn't you respond within ten days to
12 advise the EPA of whether or not you were going to respond
13 to the rest of the requirements of EPA order?

14 A. I wasn't aware that I had to.

15 Q. Did you read the order, sir?

16 A. Yes.

17 Q. Did you read --

18 MR. QUINN: May I please have Government
19 Exhibit Number 5 which I believe has been introduced into
20 evidence I believe is number five, the administrative
21 order.

22 Q. Sir, I am going to show you what will be marked
23 as the next Government Exhibit Number 8.

24 THE COURT: We are up to nine.

25 Q. Sir, I'd like you to turn to paragraph Roman

1 numeral ten of that order and read that paragraph to the
2 court, please.

3 A. Number ten?

4 Q. Paragraph Roman numeral ten.

5 THE COURT: Is that the letter of March 2?

6 MR. QUINN: No, Your Honor, this is an
7 administrative order which was referenced during Ms. Davis'
8 testimony. It had not been introduced.

9 THE COURT: All right, Mr. Saad, have you seen
10 the administrative order? Do you know what it is?

11 THE WITNESS: I have seen so many of them, Your
12 Honor. I will just have to have a second to look at it.

13 A. This one here is what you are talking about
14 Exhibit Number 8?

15 Q. Yes, sir.

16 THE COURT: What's the date on it?

17 THE WITNESS: April 13, '93.

18 Q. That's correct.

19 A. Number ten?

20 Q. If I may, let me ask a few foundational
21 questions. Do you recall receiving an order from a Deputy
22 United States Marshal?

23 A. Uh-huh.

24 MR. QUINN: United States offers that this is
25 the exhibit. This is the administrative order which was

1 delivered to Mr. Saad and would have Deputy Marshal Link
2 available to testify if the Court so requires.

3 Q. Sir, I'd like to you to read paragraph ten to
4 the Court, please.

5 A. Notice of intention to comply?

6 Q. Yes.

7 A. On or before the effective date of this order
8 Ellis and Kathy Saad shall provide written notice to EPA
9 stating whether they intend to comply with the terms of
10 notice by overnight carrier, return receipt requested, to
11 Elizabeth B. Davis, Assistant Regional Counsel, U.S.
12 Environmental Protection Agency Northeast, Atlanta, Georgia
13 3365. In the event that Ellis and Kathy Saad fail to
14 provide such notice, they will be deemed not to have
15 complied with the terms of this administrative order.

16 Q. Did you provide such notice as required by that
17 paragraph?

18 A. No, sir.

19 Q. Why not?

20 A. Numerous reasons.

21 Q. What are they?

22 A. I was in trying to find an attorney to help me
23 and then time when I was, you know, hey, I am telling you I
24 did the best I could.

25 Q. You did not submit any notice?

1 A. No, I did not. I am not denying.

2 Q. Did you phone call her?

3 A. I did call occasionally when I got everything
4 every time I received anything, I always made calls to Drew
5 Goddard or PRP's, some of their people or Atlanta EPA.

6 Q. But you didn't provide written notice as
7 required by paragraph ten of that order, did you?

8 A. No.

9 Q. Do you remember talking to me in March of this
10 year?

11 A. Yes.

12 Q. Do you remember me asking you whether you would
13 grant us access to the property at that point in time?

14 A. Yeah.

15 Q. And you did not grant us access at that time,
16 did you, sir?

17 A. No.

18 Q. You have mentioned that you are more than happy
19 to give access to the property; is that correct?

20 A. I have stated that numerous times to lots of
21 people.

22 Q. Then why haven't you given us access, sir?

23 A. Because I can't agree to what you want, no.

24 Q. What do you perceive that we want, sir?

25 A. You want me to vacate the property, to leave it

1 and give it to you to do as you want for now you are saying
2 two years. I have been told a year, six months, and now
3 you are asking for two years in the motion you presented
4 this morning.

5 Q. What is the business you conduct at that site,
6 sir?

7 A. I am doing construction remodeling.

8 Q. That property?

9 A. Yes, sir, I work out of that location. I have
10 no other place to work.

11 Q. Sir, you had mentioned that -- are you
12 qualified to do hazardous waste clean-ups?

13 A. No, sir.

14 Q. Did you ever tell Mr. Stroud that you were?

15 A. I don't recall if I did.

16 Q. Did you tell him you were --

17 A. I have done them. When you say qualified, I
18 haven't taken the schooling and the requirements that the
19 EPA requires nowadays, but I was doing that kind of work in
20 seventy for Chevron before all the requirements were
21 required, you know.

22 Q. What did you do?

23 A. I mean I cleaned, I removed and dismantled bulk
24 oil bulk plants.

25 Q. What did you do with the oil bulk plants after

1 you dismantled them?

2 A. If it was steel tanks if they were usable they
3 were sold. If they are they were not, you know, usable,
4 they were cut up dismantled and thrown, you know, carry to
5 the scrap iron works.

6 Q. What's a hazardous waste manifest, sir?

7 A. It is a document that lists materials or waste
8 that was handled or removed from a location.

9 Q. Have you ever filled out any of those with
10 regard to your property on Trousdale Road?

11 A. Yes.

12 Q. Who did you submit them to?

13 A. The Trisell.

14 Q. Who is that?

15 A. Trisell.

16 Q. What's that?

17 A. You have got to first let me explain. I when
18 PRP's were doing some of this, I was there on the site
19 signing and filling out forms for them when the people came
20 up to pick up the sludge and the waste.

21 Q. Sir, do you recall receiving a CERCLA Section
22 104(e) request for information from the EPA in which the
23 EPA --

24 A. I --

25 Q. Let me elaborate a little bit. In which the

1 EPA asked for your financial status and documents relating
2 to your financial condition?

3 A. I don't recall.

4 Q. Do you not recall receiving it, or did you not
5 receive it?

6 A. I don't recall receiving it.

7 MR. QUINN: One moment please, Your Honor.

8 Your Honor, no more questions of Mr. Saad at
9 this point in time. However, I would still like to recall
10 Mr. Stroud to the stand to rebut the allegations made.

11 THE COURT: Okay.

12 (WITNESS EXCUSED.)

13 * * *

14 FRED STROUD was recalled, and having been
15 previously sworn and remaining under oath, was examined and
16 testified as follows:

17 DIRECT EXAMINATION

18 BY MR. QUINN:

19 Q. Mr. Stroud, you just heard Mr. Saad testify you
20 threatened to lock him up. Is that what you heard?

21 A. That's what I heard him say.

22 Q. Did you ever do that, sir?

23 A. No, sir. There is -- I don't believe there is
24 a lock-up provision on this super fund part as far as what
25 I normally tell people that are PRP's that the way the law

1 works if they don't take the initiative and do the
2 clean-up, the agency can come up after them for up to three
3 times the cost of the clean-up.

4 Q. That's a civil penalty; is that correct?

5 A. That's correct.

6 Q. Did you tell Mr. Saad that, or do you know?

7 A. I repeated that to him and to the PRP's out
8 there before on site.

9 Q. What did you tell them with regard to the cost
10 that EPA incurs with regard to responding to the property,
11 what did you tell them about those costs?

12 A. They are responsible for EPA's oversight costs,
13 any contractors we use for oversight costs at the site and
14 any other parts of the agency that we might use to do
15 assessments or do sampling at the site.

16 Q. Mr. Saad also said that you said something
17 about his brother. Did you hear that?

18 A. No, sir, I didn't hear that.

19 Q. Mr. Saad I believe said that you would do
20 everything in your capabilities I believe to lock up his
21 brother, I believe was the testimony.

22 A. I don't think I stated that. I thought his
23 brother was a member of the Sheriff's Department for
24 Davidson County.

25 Q. Did you ever threaten to lock up Mr. Saad's

1 brother?

2 A. No, I never met him even during that criminal
3 investigation during the '79 and '80.

4 Q. Did you ever threaten to lock up any member of
5 Mr. Saad's family?

6 A. No, sir.

7 Q. Thank you.

8 MR. QUINN: No more questions, Your Honor.

9 THE COURT: Anything you have?

10 CROSS EXAMINATION

11 BY MR. SAAD:

12 Q. You don't recall the meeting at the site at the
13 Trousdale property when there was myself and four or five
14 other PRP's all standing around discussing one of the times
15 where I had given access and they were going to clean it up
16 and this was approximately in '91, '92, somewhere in there
17 and you and I did not know each other. You did not
18 recognize me and I didn't recognize you. And you were
19 telling them that if it is the last thing you do you will
20 put John Saad under the jail. I believe those were your
21 exact words.

22 A. I don't think I said anything like that. Those
23 are not the words I would use.

24 Q. I will swear that you said it because I heard
25 you.

1 THE COURT: Ask him the question. You asked
2 him and he's denied it.

3 Q. And I know there were numerous others.

4 THE COURT: Don't testify.

5 Q. I stepped forward and I identified myself and I
6 asked you who you were. You told me and then I said do you
7 have some proof that he should be locked up? I know him.
8 He is my brother, but, you know, maybe he's done something.

9 And you said I don't need any proof, and then
10 you showed me took your wallet out and showed me your badge
11 and said that's all the proof I need.

12 Are you going to deny it?

13 A. Yes, sir, I am denying it.

14 Q. I figured you would.

15 A. That's not the way.

16 MR. QUINN: Objection, Your Honor.

17 Q. No further questions.

18 (WITNESS EXCUSED.)

19 * * *

20 THE COURT: Any other proof?

21 MR. QUINN: Yes, Your Honor. One item came up
22 during Mr. Saad's testimony regarding the offering of a
23 copy by Ms. Davis, and we would like to recall Ms. Davis to
24 rebut those allegations as well.

25 THE COURT: Copy request?

1 MR. QUINN: A copy of the administrative order.
2 Thank you, Your Honor.

3 BETH DAVIS was recalled, and having been
4 previously sworn and remaining under oath, was examined and
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MS. COBB:

8 Q. Ms. Davis, you heard Mr. Saad's testimony as to
9 his your meeting?

10 A. Yes.

11 Q. Involving the administrative order. When you
12 met with Mr. Saad that day and you offered him the
13 administrative order, did you have a copy for Mr. Saad?

14 A. Yes, I did. I had the original and two copies
15 of the order with me.

16 Q. And did you offer the copy to Mr. Saad and let
17 him know that you had a copy for him?

18 A. Yes, I did.

19 Q. And Ms. Davis, did you ever receive any phone
20 call or any kind of communication from Mr. Saad following
21 the either that day or after having the administrative
22 order served by the United States Marshal on Mr. Saad
23 indicating any willingness to allow access?

24 A. No, I did not. I had no contact from Mr. Saad.

25 Q. Thank you, Ms. Davis.

1 MS. COBB: Do you have any questions?

2 CROSS EXAMINATION

3 BY MR. SAAD:

4 Q. When you my son was with me and when you asked
5 me to sign that, you said you would not give me anything
6 unless I signed it. That's what your words were. I'd have
7 to sign it to get a copy to get anything?

8 A. No, sir, I asked you to sign the order to
9 indicate that you had received it, but I also had a copy of
10 the order for you.

11 Q. But you would not give me -- you did not give
12 me a copy?

13 A. You would not allow me to give you anything.

14 Q. Unless I signed it. And I told you if you gave
15 me a copy I would read it over and look it over and then
16 sign for one if I felt I should?

17 A. No, sir.

18 Q. Okay. No more questions.

19 MS. COBB: No further questions.

20 (WITNESS EXCUSED.)

21 * * *

22 MR. QUINN: United States concludes its offer
23 of evidence, Your Honor.

24 THE COURT: Okay.

25 The statute in this case authorizes the

1 Attorney General or the U.S. Attorney to commence actions,
2 civil actions to compel compliance when orders referred to
3 in the Act have not been complied with, and this is the
4 genesis of this suit. The statute also provides a standard
5 of review by which the District Court must resolve the
6 matters requested in such a civil suit.

7 And the standard is whether or not there is a
8 reasonable basis to believe that there may be a release or
9 threat of a release of a hazardous substance or pollutant
10 or contaminant. In this case the record seems to be clear
11 that at times related to this property going back at least
12 to '79 that the property clearly contained hazardous
13 substances. There is some question as to the extent to
14 which those hazardous substances have leaked into adjacent
15 properties or into the underground water system, but based
16 on the prior testing on the property which has been shown
17 by one of the exhibits here, a number of hazardous
18 substances or contaminants have been found on the property
19 in the past.

20 The Court believes that the government has
21 articulated a reasonable basis for its request for access
22 to the site. The government through EPA has had a long-
23 standing relationship with this property and to Mr. Saad in
24 connection with its effort and the efforts of the potential
25 responsible parties in attempts to clean up the site. Once

1 such a reasonable basis for its request is asserted, the
2 Court is entitled to deny the government's request for
3 immediate access only if it finds that the circumstances of
4 the case indicate that the demand for entry or inspection
5 is arbitrary or capricious or that it represents an abuse
6 of their discretion or otherwise is unlawful.

7 So the statute provides standards which show a
8 great deal of deference to the EPA's decision, and it
9 evidenced Congress's intent to grant to EPA broad access to
10 and authority over super fund clean-up sites.

11 In the event the Court finds that there has
12 been an interference with an entry or an inspection after
13 having found this there is a reasonable basis for its
14 request for access, the statute further provides that the
15 Court shall enjoin such interference or to direct
16 compliance with the EPA order and to prohibit interference
17 with the entry and inspection. And then there is a caveat
18 that unless the circumstances of the case dictate otherwise
19 because of the arbitrary nature or capricious nature of the
20 request or that it represents an abuse of discretion or is
21 otherwise unlawful.

22 The Court believes in this case that the
23 request is not arbitrary or capricious, nor does it
24 represent an abuse of discretion or otherwise unlawful.
25 But the Court is concerned about the apparent long delay in

1 resolving this matter. The Court notes the obvious
2 frustration of Mr. Saad in dealing with the EPA. The Court
3 also notes the frustration interest of EPA in dealing with
4 Mr. Saad, but this matter has been going on for a long,
5 long time.

6 Mr. Stroud in answer to some of the Court's
7 questions tried to explain what the EPA has been doing over
8 the years, and there has been changes in supervisors and
9 heads of EPA and perhaps policy positions have changed.
10 But I am not sure that's altogether satisfactory as relates
11 to owners who wish to get on with their lives.

12 Now, it may be that Mr. Saad has brought some
13 of this on himself by his past recalcitrant actions or
14 maybe some of the neighbors have also added to the problem.
15 So the Court is going to grant the government's motion in
16 the case and permit immediate access to the property. And
17 the Court will further enjoin any interference with that
18 access. But the Court is not going to simply give an
19 open-ended invitation to spend the next several years with
20 this project. And so the Court is going to require the EPA
21 in its proposed order and injunction to provide some
22 parameters within which it is to work and operate and test
23 and inspect. And I expect the EPA to speak with Mr. Saad
24 about what its request is and try to define for him what it
25 has in mind and what it plans to do and some general time

1 frame or for doing that, keeping in mind his interest in
2 operating his business at that location. So I am not going
3 to spell out the exact terms of the order and the
4 injunction at this time. I would suggest the two of you
5 talk to the extent that you can do so, and I hope that you
6 will because the Court is going to has already ruled, but I
7 want to tie it down a little more specifically as to what
8 the EPA's plans to do and a general time frame for doing
9 it.

10 Now, I realize that not knowing what's there it
11 is it may be impossible to define all the circumstances. I
12 understand that. But there is something that you have in
13 mind that you want to do or you ought not to be asking for
14 access. And that ought to take some reasonable amount of
15 time to accomplish, and based on that discovery, whatever
16 that is, that may lead to something else. So what I am
17 saying is you may then want after that first phase to
18 either broaden or extend in some way the authority to act.
19 So I am not opening both doors just to say to go in there,
20 but I think Mr. Saad has a right to know and to expect what
21 is to take place within what general time frame, and the
22 Court wants to know too because it seems to me that the EPA
23 has dilly-dallied around in this project for a while.

24 MR. QUINN: Your Honor, would a period of two
25 years be within the Court's --

1 THE COURT: No. That's too long. I want
2 something if you want immediate access that indicates to me
3 you have got in mind that you want to do something and if
4 you want it do in two years or do you want to do it now.
5 Now, that doesn't mean you have to get it accomplished
6 right now, but tell me what you want to do and give me some
7 general time frame. I know you have got a contract with
8 other people, but do it. I don't think you have to say
9 well, it is going to take them two years to do it. If it
10 is, do you need immediate access?

11 If I am skipping some steps, you can try to
12 persuade me in your order to do that, but I am not saying
13 you have to get through in six months or nine months but
14 you ought to be able to get in and do whatever you need to
15 do to determine what further needs to be done if something
16 else needs to be done.

17 MR. QUINN: Yes, Your Honor.

18 THE COURT: And let's work at it by steps but
19 definitive steps so those people above you will know that
20 the Court is going to monitor their activity and that
21 it's given them a right to do what needs to be done, but I
22 want -- they are going to be accountable. The EPA is going
23 to have to be accountable on some reasonable time period to
24 get it done and just say that they can do things within two
25 years I think is too loose given the background of this

1 case. I mean you have had 15 years. Now, I know that's
2 not all your fault, and I accept Mr. Stroud's explanation
3 about part of that.

4 MR. QUINN: Yes, Your Honor, we'll prepare --

5 THE COURT: This is not a brand new problem.
6 We'll prepare an order outlining what EPA reasonably
7 anticipates needs to be done and the time frame for each
8 one of those steps and possible decision trees which may
9 come out of that. And we can and I am not inviting any
10 additional proceedings, but we can amend whatever is
11 entered if there is reasonable grounds and basis to do
12 that.

13 MR. QUINN: Thank you, Your Honor. Your Honor,
14 there is another item that was pleaded for in the United
15 States' complaint. Pursuant to the statute, the Court may
16 assess civil penalties based upon conditions in the
17 proceeding. The United States is not prepared to present
18 evidence or make a motion at this time but would request
19 leave of court to do so and perhaps request a briefing
20 schedule from the court as to that issue.

21 THE COURT: All right. Well, we will reserve
22 that issue.

23 MR. QUINN: Thank you.

24 THE COURT: Anything else we need to decide
25 here today? Mr. Saad?

1 MR. SAAD: Your Honor, make sure I understand I
2 am not going to have to vacate my property; is that
3 correct?

4 THE COURT: I am going to wait and see what the
5 order says. My under-- let me ask Mr. Quinn if what if he
6 knows at this time what all is going to be entailed in this
7 initial inspection and testing?

8 MR. QUINN: United States does not know whether
9 at this point in time whether Mr. Saad will be required to
10 vacate the property. However, also the United States does
11 not believe that testing will be so intrusive as to
12 constitute a compensable taking. However, if it does, Mr.
13 Saad has recourse through the Tucker Act in the court of
14 claims.

15 THE COURT: Well, what we're saying right now,
16 Mr. Saad, I haven't said that you have to vacate. EPA
17 hasn't said you have to vacate. I expect you to cooperate
18 with EPA. I have given them access to the property. Their
19 testing will be disruptive to some extent when they are out
20 there. I don't believe at least at this point from what I
21 understand that it will require you to vacate the premises.
22 If after some initial testing they are able to convince me
23 that that's required, Mr. Quinn, you have have to reapply
24 to this court.

25 MR. QUINN: Yes, Your Honor.

1 MR. SAAD: Your Honor, all I ask is the use of
2 my building. I can give them access to all the land
3 without any problem without any interruptions and have my
4 full cooperation.

5 THE COURT: Good. Because that's what they
6 will do, and if they want to look in your building though I
7 expect you to let them in and look.

8 MR. SAAD: In the past I furnished them water,
9 electricity. I will continue to do so.

10 THE COURT: I expect that you will and they can
11 look forward to that kind of cooperation. The only thing I
12 am saying is if for some reason they believe that it is
13 necessary for you to vacate the building, they will have to
14 apply back to this court.

15 MR. SAAD: Thank you, Your Honor.

16 THE COURT: And we'll consider it at that time.

17 MR. QUINN: Thank you, Your Honor.

18 * * *

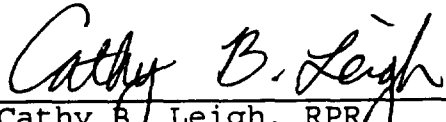
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REPORTER'S CERTIFICATE

I, Cathy B. Leigh, Official Court Reporter for the United States District Court for the Middle District of Tennessee, with offices at Nashville, do hereby certify:

That I reported on the Stenograph shorthand machine the proceedings held in open court on April 7, 1994, in the matter of USA vs. SAAD, Case No. 3:94-0014; that said proceedings in connection with the hearing were reduced to typewritten form by me; and that the foregoing transcript (pages 1 through 93) is a true and accurate record of said proceedings.

This the 28th day of April, 1994.


Cathy B. Leigh, RPR
Official Court Reporter